

Patti Cobb

From: Jennifer Lee
Sent: Thursday, January 5, 2023 8:35 AM
To: Patti Cobb
Subject: FW: Time is of the Essence - Support Requested: Sign the Las Vegas Amicus Brief

Jennifer Lee, City Clerk
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Please note my new email address.

From: Nevada League of Cities & Municipalities <cjohnson+nvleague.org@ccsend.com>
Sent: Wednesday, December 21, 2022 10:39 AM
To: Jennifer Lee <CityClerk@cityofelynv.gov>
Subject: Time is of the Essence - Support Requested: Sign the Las Vegas Amicus Brief

December 21, 2022



NEVADA
LEAGUE OF CITIES AND MUNICIPALITIES

To Member Municipalities,

Update

Information regarding this request was initially sent on November 10, 2022. On November 18, 2022, the Member Municipalities of North Las Vegas and Reno joined Las Vegas along with the International Municipal Lawyer's Association to submit an amici curiae brief to the Nevada Supreme Court. The League is asking that each Member Municipality consider supporting Las Vegas by submitting the attached amicus joinder, which would

indicate concurrence with the submitted amici curiae brief. The brief is too large to send with this message, but we will send it directly upon request.

To utilize and submit the attached amicus joinder, please modify the highlighted portions and submit it electronically with the Clerk of the Nevada Supreme Court using the Nevada Supreme Court's E-Filing System (E-Flex). If you would like a Word version of the Joinder, we will send it directly upon request. Using this joinder will allow the Supreme Court to consider your municipality's support without introducing additional arguments for the Court to consider. This is the most efficient way to show the Court the solidarity of Nevada's cities and municipalities.

Amicus Joinder

Background

The City of Las Vegas is seeking amicus support for an appeal of a district court judgment to the Nevada Supreme Court. The District Court ruling in question is critically important for every Nevada city. The ruling, if not reversed, would eviscerate the authority of Nevada cities to regulate land development. The District Court held that (1) the zoning of property in Nevada confers a constitutionally protected property right in the owner to build whatever the owner desires, as long as the use is a permitted use under the zoning and the development does not exceed the maximum density allowed by the zoning, (2) the City has no discretion to deny or condition approval of a development application, and (3) the City's Master Plan is irrelevant to any development application.

In issuing these novel and unprecedented rulings, the Court has found unconstitutional virtually the entire land use regulatory scheme in Nevada, which requires cities to adopt General Plans governing the use of property and confers broad discretion on cities to apply General Plan designations and zoning ordinances in the review of land use permit applications. NRS 278.010–278.828. The Court's ruling has also invalidated the City's General Plan and Unified Development Code 19.10.010-19.18, under which the City exercises the discretionary powers granted by state law to process applications for land use permits.

Consistent with the League's Guiding Principle and Mission, the League will be supporting the City of Las Vegas by signing the amicus brief and we encourage the Member Municipalities to join us in this support.

Please review the League's Guiding Principle and Mission at <https://nvleague.com/about-us/>

Facts

In 1990, the City of Las Vegas ("City") approved a 1,539-acre planned development known as Peccole Ranch Master Plan ("PRMP") on the condition that the developer set aside more than 200 acres for open space. The City rezoned 614 acres of the PRMP for Residential Planned Development/seven units per acre ("R-PD7"), which requires open space to compliment the housing developed in the district. The developer elected to use the open space for a 211-acre golf course that later expanded to 250 acres. In 1992, the City approved a new General Plan that designated the residential portion of the R-PD7 zoning district for residential and the open space Parks/Recreation/Open Space ("PR-OS"). PR-OS does not permit housing. The City reconfirmed the PR-OS designation repeatedly by ordinances approving updates of the General Plan, the latest occurring in

2018. Under NRS 278.250, the General Plan designation is the law governing the future use of the land, and validly prohibits residential development even if residential use is a permitted use under the zoning. Under well-established law, the City has discretion to lift the PR-OS designation or maintain the status quo.

In 2015, the original developer of the PRMP sold the golf course to EHB Companies ("Developer") for \$4.5 million. The Developer shut down the golf course and segmented the property into four development sites. In 2017, the City approved the Developer's application for 435 luxury-housing units on a 17-acre portion of the golf course. The City denied the Developer's application to develop 61 units on a 35-acre portion of the golf course. The City never ruled on the Developer's application for development of housing on a 133-acre portion of the golf course because its application was incomplete. The Developer never applied to develop the 65-acre portion.

In 2017 and 2018, the Developer sued the City in four separate lawsuits for a regulatory taking, one for each property, even though the Developer intended to develop the entire golf course property. In the four lawsuits, the Developer demands \$386 million in damages. In the 35-acre case at issue in the proposed motion for a stay, the District Court found that the City is liable for a taking of the property for denying the Developer's application to build 61 housing units, even though the 35-acre property could not legally be used for housing at the time the Developer bought it. The District Court concluded that the Developer has a constitutional right to build housing on the 35-acre property up to seven units per acre merely because housing is one of the permitted uses of the property. In drawing this conclusion, the Court found that the City has no discretion over the application and that the City's General Plan is a nullity. The total judgment in this case exceeded \$49,000,000.

An amicus brief is currently being prepared and the City of Las Vegas requests that other municipalities sign on to the brief to show support for Las Vegas' position in this appeal.

Please let me know if you have any questions. Thank you for your membership. There is strength in unity.

Wesley Harper
Executive Director
702.817.5718

One Nevada Plan

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The One Nevada Plan was ratified on January 31, 2022, by the Board of Directors. It was named by President Cedric Crear to announce that it benefits each of the municipalities in Nevada without regional or population biases. The effectiveness of the One Nevada Plan is based upon a significant increase in the frequency and the quality of member engagement. The One Nevada Plan is an implementation of the 2022 Strategic Plan, which was also ratified on January 31, 2022. It is based on the four core objectives of Advocacy, Communication, Education, and Economic Development as well as the philosophy, guiding principle, and mission for the League. However, beyond these core objectives, the League shall be involved in any activity that advances or promotes the League's philosophy, guiding principle, or mission. Please go to nvleague.org for more information.

Nevada League of Cities & Municipalities | 2000 Vassar Street, PO Box 12458, Reno, NV 89510

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,

Appellant,

vs.

180 LAND CO, LLC, a Nevada limited-liability
Company, FORE STARS, LTD., a Nevada
limited liability company,

Case No. 84345; 84640

Respondents.

[ENTITY NAME] JOINDER TO BRIEF OF AMICI CURIAE CITY OF RENO, CITY OF NORTH LAS
VEGAS, AND INTERNATIONAL MUNICIPAL LAWYER'S ASSOCIATION IN SUPPORT OF
APPELLANT

Comes now, [ENTITY NAME] by and through their undersigned counsel, and pursuant to
NRAP 29(a) hereby joins in its entirety the Brief of Amici Curiae City of Reno, City of North
Las Vegas and International Municipal Lawyers Association in Support of Appellant filed on
December 5, 2022.

[LAW FIRM or ENTITY]

[ATTORNEY], Esq.
Nevada Bar No. [XXXX]

[ADDRESS]

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Attorney for Amicus Curiae